



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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08 May 2007

**IND102462.E**

India: Procedure to obtain an affidavit within India, including whether it needs to be certified by a notary (2005 - 2007)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Various oral sources provided information to the Research Directorate explaining that procedures for obtaining an affidavit in India are complex. Beginning with an overview of the basic procedure to obtain an affidavit, this Response subsequently outlines additional processes also related to affidavits.

A lawyer practising in India who is a notary (with foreign authentic recognition) and a commissioner of oaths provided the following information to the Research Directorate in correspondence dated 29 March 2007. To obtain an affidavit in India, one must execute or swear his or her affidavit in front of an approved notary. The affidavit must be made on "non-judicial stamp paper," which costs about 20 Indian rupees (INR) [or approximately 0.54 Canadian dollars (CAD) (Canada 28 Mar. 2007)]. The notary must certify the attestation with his seal along with a notary stamp and this attestation "should be entered in the Notarial Registration Book."

The lawyer also provided the Research Directorate with a pamphlet entitled *Knowledge About Notary & Oaths Commissioner*, of which he is the author, containing the following information:

1. Non-judicial affidavit ... can be attested by the following persons:

- a. Commissioner for Oaths by State according to Section 3(2)(b) of the Oaths Act (XLIV of 1969);
- b. Notary appointed under the Notaries Act 1952: - respective area or Whole of India Notary;
- c. Magistrate - respective area.

### II. COMMISSIONER FOR OATHS

1. According to [the] Indian Oaths Act (XLIV of 1969), [a] Commission for Oaths is appointed for two purposes:

- i. by the High Court for judicial purpose and
- ii. by the State Government for non-judicial purpose.

2. Commissioner for Oaths appointed by the High Court is not empowered to attest non-judicial affidavits.

3. The Oaths Commissioner appointed/conferred by the State Government is exempted from affixing the special adhesive stamp (like Notary adhesive stamp), but such attestation should bear Oath Registration Entry Number with date.

4. Commission[er] for Oaths is empowered to administer oaths and affirmations etc., subject to the provisions of the Oaths Act (XLIV of 1969)....

### III. NOTARY: (A)

1) Notary is a state officer whose functions are to attest and certify, by his hand and official seal, various documents, in order to give them authenticity in other jurisdictions.

2) To perform other official acts, the power to do which is conferred by statutory enactment. As a general rule, the functions of a notary are ministerial, not judicial. They are confined to the civil, as distinguished from the criminal, branch of the law.

(B) According to [the] Notaries Act, there are two categories of Notaries, i.e. (1) Central Government Notary and (2) State Government Notary.

1) Central Government Notary is appointed by the Central Government having jurisdiction for the whole of India or part thereof.

2) State Government Notary is appointed by the State Government for a particular district or area and such Notary [has] jurisdiction within that district or area only. A notary who is appointed for a particular area should practise in that area only. He should not extend the area or practise outside the area mentioned in the certificate of practise without the permission of appointing authority.

3) When the Notaries (Central or State) exercise their power under Section 8 of the Notaries Act 1952 in the execution of the duties of his office, Article 42 Stamp Duty on Instrument [of the] Indian Stamp Act should be complied [with] subject to state authority amendment:

(a) Central Government Notary - Special Adhesive Notary

at Delhi - Stamp Value [of] Rs.3/(three) [or approximately 0.08 Canadian dollars (CAD) (Canada 7 May 2007a)]

Other - or Rs. 10/ [or approximately CAD 0.27 (ibid. 7 May 2007b)]

(b) State Government - Notary Special Adhesive Notary Stamp Value [of] Rs. 10/(ten) [or approximately CAD 0.27 (ibid.)]

at Bombay - or Rs. 25/ [or approximately CAD 0.68 (ibid. 7 May 2007c)]

(c) Union Territory Notary - Special Adhesive Notary Stamp Value Rs.3/(three) [or approximately CAD 0.08 (ibid. 7 May 2007a)]

4) If the document/affidavit will be attested under the joint designation of the Notary and Oath Commissioner, such document/affidavit should bear special Notary adhesive stamp of the value [of] Rs.10/ [or approximately CAD 0.27 (ibid. 7 May 2007b)] (according to article 42 of Indian stamp duty) with Notarial Certificate, area of practise, Register Number of the document [and] date.

5) Function of Notaries: a Notary may do all or any of the following acts by virtue of his office, namely:

*(a) Verify, authenticate, certify or attest the execution of any instrument;*

*(b) Present any promissory note, hundi or bill of exchange for acceptance of payment or demand better security;*

*(c) Note or protest the dishonour by non-acceptance of non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act (XXVI of 1881) or serve notice of such note or protest; ....*

*(e) Administ[er] oath to, or take affidavit from, any person; ....*

*(g) Prepare, attest or authenticate any instrument intended to take effect in any country or place outside [of] India in such form and language as may conform to the law of the place where such deed is entitled to operate; ....*

*(i) Besides recording declaration of payment for honour, a notary shall also register notings and protests made. Every notary shall maintain a notarial register in the prescribed form....*

6) Each of his act according to [the] Notaries Act and Rules should be entered in the Notarial Register book (Form XV) with signature of the party in column No. 10 of the book.

7) Seal of Notary: Every notary shall use a plain circular seal, bearing, if he has been appointed by name, his name and the name of the area within which he has been appointed to exercise his functions and the circumscription "Notary" and if he has been appointed by virtue of his office, the name of his office and of the area within which he has been appointed to exercise his functions and the circumscription "Notary"....

9) Every Notary shall grant a receipt for the fees and charges realized by him and maintain a register showing all the fees and chargers realized. Fees include professional and Notary fees.

#### **10) Evidenciary value of the acts of Notaries:**

Section 56 of the Evidence Act provides that "no fact of which the court will take judicial notice need be proved" and Section 57 of the Evidence Act provides that the Court shall take judicial notice of the facts specified therein; and seals of Notaries Public are provided to be taken judicial notice of (... Sub. Sec. (6) of Sec. 57 of Evidence Act)

Hence an act done by a Notary in his official capacity under his signature and official seal is presumed to be proved....

11) Each Notary shall have an office within the area mentioned in the certificate issued to him and he shall exhibit it in a conspicuous place there at a board showing his name and his designation as a Notary...

### **13) Foreign Authentic Notary:**

All Notaries are not empowered to authenticate document to take effect outside of India. Very few notaries are recognized to authenticate documents to take effect abroad... [A] foreign authentic notary has to act according to direction given in the book "Brooke's Treatise."

14) [A] Notary whole of India with Foreign Authentic Recognition can verify and attest the signatures of other Area Notaries on the documents intending to take effect at foreign countries.

15) For document attestation and authentication intending to take effect at foreign countries, [the] concerned party can approach directly [a] Foreign Authentic Notary who has power, jurisdiction and recognition for [the] respective countries. While attesting the original documents, the notary should verify the following:

- a. Genuineness of the documents;
- b. Holder of the documents; and
- c. Issuing authority of the documents.

16) When you approach any Notary for the above referred notarial purpose, please ascertain the following:

- a. Whether the Notary has jurisdiction for [the] Area or City or Taluk or District or Whole of State or Whole of India with Foreign Authentic Recognition;
- b. Whether the Notary has valid certificate of practice;
- c. The date of expiry of commission of his certificate;
- d. Whether the Notary makes entry of the documents in his Notarial Register Book which is to be inspected every six months by the Competent Authority. (*Knowledge About Notary & Oaths Commissioner* n.d.)

### **Other procedures related to affidavits**

Regarding the appointment of notaries, a lawyer practising in Kolkata stated, in correspondence to the Research Directorate dated 13 April 2007, that central and state governments must maintain a register of the names of the individuals who have been issued certificates of practice to act as notaries. Both governments must also publish in the Official Gazette in January of every year a list of government-appointed notaries (Lawyer 13 Apr. 2007). The register and the list appearing in the Official Gazette are both public documents (ibid.). The lawyer indicated that, during judicial proceedings, officers "empowered by the Courts in India" can affirm affidavits and administer oaths (ibid.). When an affidavit has received authentication by a notary, it is presumed that the identity of the person and the content of the document are "true and correct" unless proven otherwise and false statements under oath can be subject to criminal prosecution for perjury (ibid.). The lawyer added the following information regarding notary seals:

Every Notary uses a Seal in the form and design prescribed under the Rules. A Notary Seal is round in form and generally bears the words, 'Notary - Government of India' around its circumference. In the centre of the Seal the same bears the name of the Notary and his Registration Number. There are also Notarial Stamps affixed to an affidavit stated to have been affirmed before a Notary. (ibid.)

Contrary to the two above-noted oral sources that do not mention the procedure for drafting an affidavit, the South Asia Desk representative of the Asian Human Rights Commission stated, in correspondence to the Research Directorate dated 2 April 2007, that one must first consult a lawyer, who will draft the affidavit, before seeing the notary to proceed with the notarization of the affidavit. The South Asia Desk Officer also stated that not all affidavits need to be notarized and gave as an example an affidavit that would be used as a guarantee in a contract; in this case the affidavit would need to be signed before a lawyer and would not need to be notarized (AHRC 2 Apr. 2007).

A New Delhi-based human rights lawyer and member of the Committee for Information and Initiative on Punjab (CIIP) indicated, in correspondence to the Research Directorate dated 1 April 2007, that there are two types of affidavits: the ones that are used in court and the ones that are provided to any person or authority. The lawyer stated that the first type of affidavit is generally typed or hand-written on watermark paper, however, "copier paper" is now also accepted (Lawyer 1 Apr. 2007). The second type of affidavit has to be prepared on a "non-judicial stamp paper," which the lawyer described to be "a special kind of paper; with the official stamp of the

government of India printed-embossed upon it" that can only be obtained from authorized vendors (ibid.). The lawyer specified that, apart from affixing his or her stamp, the notary may also affix "special government of India notarial stamps" on the document (ibid.). Although such stamps are not required on every affidavit, it is not always clear (even to the notaries) which documents require these stamps, so notaries will simply affix these stamps on documents to ensure that the affidavit will be recognized as having been notarized (ibid.). The lawyer indicates that notarial stamps contain the emblem of the government of India and usually the word "Notarial" printed in the lower half with a denomination also printed, usually of five rupees [approximately CAD 0.13 (Canada 2 Apr. 2007)] (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

#### References

Asian Human Rights Commission (AHRC). 2 April 2007. Correspondence from the Desk Officer for India.

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*Knowledge About Notary & Oaths Commissioner*. N.d. Pamphlet sent to the Research Directorate on 11 April 2007 by lawyer in Chennai.

Lawyer and member of the Committee for Information and Initiative on Punjab (CIIP), New Delhi. 1 April 2007. Correspondence sent to the Research Directorate.

Lawyer, Chennai. 29 March 2007. Correspondence sent to the Research Directorate.

Lawyer, Kolkata. 13 April 2007. Correspondence sent to the Research Directorate.

#### Additional Sources Consulted

**Oral sources:** The Canadian High Commission in New Delhi, the High Commission of India in Ottawa, the Human Rights Law Network, an academic at the William College of Law, the District Courts of Delhi, the South Asia Human Rights Documentation Centre, the Asian Human Rights Commission, the Law Commission of India and five lawyers practising in India did not provide information within the time constraints of this Response.

Attempts to contact the India Centre for Human Rights and Law, the Bar Council of India, the Punjab and Haryana High Court Bar Association, the Punjab Human Rights Organization, the Ministry of Law and Justice of India and three lawyers practising in India were unsuccessful.

**Internet sites, including:** Asian Human Rights Commission, Bar Council of India, Delhi District Courts, Indian Courts, *The Indian Express* [Mumbai], Keesing Reference Systems, Law Commission of India, Ministry of Law and Justice - Government of India, National Legal Services Authority, *The Pioneer* [Delhi], Punjab and Haryana High Court Bar Association, *The Statesman* [Kolkata], Supreme Court of India, *Times of India*, *The Tribune* [Chandigarh], World News Connection.

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